

CCRB INVESTIGATIVE RECOMMENDATION

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| Investigator: Patrick Yu | Team: Squad #3 | CCRB Case #: 201807265 | <input type="checkbox"/> Force | <input checked="" type="checkbox"/> Discourt. | <input type="checkbox"/> U.S. |
| | | | <input checked="" type="checkbox"/> Abuse | <input checked="" type="checkbox"/> O.L. | <input type="checkbox"/> Injury |
| Incident Date(s) Sunday, 08/26/2018 2:30 AM, Sunday, 09/02/2018 | Location of Incident: Nostrand Avenue and Foster Avenue; East 52nd Street and Clarkson Avenue | Precinct: 67 | 18 Mo. SOL 2/26/2020 | EO SOL 2/26/2020 | |
| Date/Time CV Reported Sun, 09/02/2018 4:20 AM | CV Reported At: CCRB | How CV Reported: Call Processing System | Date/Time Received at CCRB Sun, 09/02/2018 4:20 AM | | |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
| | | |

| Subject Officer(s) | Shield | TaxID | Command |
|------------------------|--------|--------|---------|
| 1. POM Besnik Bojkovic | 9214 | 954556 | 067 PCT |
| 2. SGT Michael Scally | 03721 | 948132 | 067 PCT |
| 3. POM Joseph Bautista | 113 | 954534 | 067 PCT |
| 4. POM Jose Villafane | 01275 | 940837 | 067 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|-------------------------|-----------|--------|----------|
| 1. POF Jacqueline Vista | 06394 | 962155 | 067 PCT |
| 2. POM Ronnie Rivera | 10655 | 955385 | 067 PCT |
| 3. POM Sean Regan | 18457 | 955367 | 067 PCT |
| 4. POM Gregory Gingo | 06156 | 930218 | 067 PCT |

| Officer(s) | Allegation | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.POM Besnik Bojkovic | Abuse: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Besnik Bojkovic searched the vehicle in which § 87(2)(b) was an occupant. | |
| B.SGT Michael Scally | Abuse: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Sergeant Michael Scally searched the vehicle in which § 87(2)(b) was an occupant. | |
| C.POM Jose Villafane | Discourtesy: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Jose Villafane spoke discourteously to § 87(2)(b) | |
| D.POM Joseph Bautista | Discourtesy: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to § 87(2)(b) | |
| E.POM Joseph Bautista | Off. Language: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista made remarks to § 87(2)(b) based upon the mental disability of § 87(2)(b) | |
| § 87(2)(f), § 87(4-b) | | |
| G.POM Joseph Bautista | Discourtesy: On September 2, 2018, on East 52nd Street and Clarkson Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to § 87(2)(b) | |

Case Summary

On September 2, 2018, § 87(2)(b) filed this complaint with the CCRB via the Call Processing system.

On August 26, 2018, at approximately 2:30 a.m., officers stopped § 87(2)(b)'s vehicle on Nostrand Avenue and Foster Avenue, in Brooklyn. Sgt. Michael Scally, PO Joseph Bautista, PO Besnik Bojkovic, PO Ronnie Rivera, and PO Jose Villafane of the 67th Precinct approached § 87(2)(b)'s vehicle. Officers instructed § 87(2)(b) to exit the vehicle and he complied. As § 87(2)(b) was standing outside his vehicle, PO Bojkovic and Sgt. Scally searched § 87(2)(b)'s vehicle (**Allegation A: Abuse of Authority**, § 87(2)(g) **Allegation B: Abuse of Authority**, § 87(2)(g) PO Villafane and PO Bautista allegedly used profanities while speaking to § 87(2)(b) (**Allegation C: Discourtesy**, § 87(2)(g) **Allegation D: Discourtesy**, § 87(2)(g) PO Bautista allegedly asked § 87(2)(b) "What are you fucking retarded" (**Allegation E: Offensive Language**, § 87(2)(g) At some point, PO Jacqueline Vista and PO Gregory Gingo of the 67th Precinct arrived on the scene and arrested § 87(2)(b) after he refused to take the breathalyzer test.

§ 87(4-b), § 87(2)(g)

On September 2, 2018, at approximately 3:49 a.m., § 87(2)(b) saw the same officers from his arrest on August 26, 2018 at East 52nd Street and Clarkson Avenue in Brooklyn. The officers recognized § 87(2)(b) and PO Bautista used profanities while speaking to § 87(2)(b) (**Allegation G: Discourtesy**, § 87(2)(g) § 87(2)(b) was not issued a summons or arrested during this incident.

Findings and Recommendations

Allegation (A) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Besnik Bojkovic searched the vehicle in which § 87(2)(b) was an occupant.

Allegation (B) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Sergeant Michael Scally searched the vehicle in which § 87(2)(b) was an occupant.

It is undisputed that § 87(2)(b) was asked to exit the vehicle and then told to return inside his vehicle as they waited for PO Vista and PO Gingo to arrive on the scene to administer the breathalyzer test. § 87(2)(b) refused to take the breathalyzer test and was placed under arrest.

§ 87(2)(b) was charged with § 87(2)(b)

(Board Review 18).

In his CCRB statement, § 87(2)(b) denied consuming alcohol and denied committing traffic infractions prior to being pulled over (Board Review 01). § 87(2)(b) was asked to step out of the vehicle and Sgt. Scally and PO Bojkovic searched the front and rear seats of his vehicle for approximately five minutes. § 87(2)(b) did not know where the officers searched inside his vehicle.

Sgt. Scally, PO Bautista, PO Bojkovic, PO Rivera, and PO Villafane pulled over § 87(2)(b)'s vehicle after they observed § 87(2)(b) drive at a high rate of speed, run red lights, and fail to use turn signals (Board Review 11-14). Upon speaking to § 87(2)(b) the officers believed that § 87(2)(b) was under the influence of alcohol due to his blood shot eyes, slurred speech, unsteady feet, and smelling the odor of alcohol on § 87(2)(b).

In his CCRB testimony, PO Bojkovic stated that the driver door was left opened when § 87(2)(b) stepped out of the vehicle (Board Review 12). PO Bojkovic entered the driver side and removed the vehicle's key-fob from the center console to prevent § 87(2)(b) from driving away. PO Bojkovic did not recall if he searched anywhere else and denied searching the trunk.

In his CCRB statement, Sgt. Scally did not recall if officers searched § 87(2)(b)'s vehicle, but he denied searching the vehicle (Board Review 13). PO Villafane and PO Bautista did not recall if officers searched § 87(2)(b)'s vehicle and PO Rivera denied seeing officers do so.

The arrest report noted that a bottle of Hennessey was found in § 87(2)(b)'s vehicle (Board Review 18). After PO Bojkovic reviewed § 87(2)(b)'s arrest report during his CCRB statement, PO Bojkovic recalled seeing a bottle of Hennessey inside § 87(2)(b)'s vehicle when they initially approached the vehicle, but the other officers did not recall this.

The Highway District Intoxicated Driver Examination and the Intoxicated Driver arrest report concluded that § 87(2)(b) was under the influence of intoxicating beverages/drugs (Board Review 17).

The officers' BWC only captured the events after § 87(2)(b) was instructed to return inside his vehicle and does not show officers searching § 87(2)(b)'s vehicle (Board Review 03-07).

§ 87(2)(g)

§ 87(2)(g)

Allegation (C) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Jose Villafane spoke discourteously to § 87(2)(b)

In his CCRB testimony, § 87(2)(b) stated that on the scene, an officer, identified via the investigation as PO Villafane, told him, "Payback is a bitch," and, "I got you motherfucker" (Board Review 01). § 87(2)(b) recognized PO Villafane from a prior interaction.

In his CCRB statement, PO Villafane stated that he did not recognize § 87(2)(b) during the incident (Board Review 14). PO Villafane denied saying, "Payback is a bitch," "I got you motherfucker," and denied using profanities while speaking to § 87(2)(b).

PO Bautista, PO Bojkovic, Sgt. Scally, and PO Rivera denied having any prior interactions with § 87(2)(b) and denied hearing an officer use profanity toward § 87(2)(b) (Board Review 11-13).

As noted above, the officers' BWC did not capture the incident when § 87(2)(b) initially stepped out of the vehicle. Additionally, the officers' BWC did not capture PO Villafane using profanities.

§ 87(2)(g)

Allegation (D) Abuse of Authority: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to § 87(2)(b)

Allegation (E) Offensive Language: On August 26, 2018, at Nostrand Avenue and Foster Avenue, in Brooklyn, Police Officer Joseph Bautista made remarks to § 87(2)(b) based upon the mental disability of § 87(2)(b)

In his CCRB testimony, § 87(2)(b) stated that during the incident he asked PO Bautista if he could call his lawyer and PO Bautista told him no and PO Bautista said, "What the fuck. Are you drunk? Are you stupid or something? You are being detained. You cannot touch your phone" (Board Review 01). PO Bautista also said, "What are you fucking stupid? Are you drunk or something," or, "What are you fucking retarded?"

In his CCRB statement, PO Bautista stated that he repeatedly told § 87(2)(b) that he could not use his phone, but he did not recall if he used profanities (Board Review 11).

Three clips from PO Bautista's BWC footage captures the conversation between PO Bautista and § 87(2)(b) regarding § 87(2)(b) asking if he could call his attorney and PO Bautista telling § 87(2)(b) that he could not use his phone (Board Review 22-24). PO Bautista's BWC footage does not capture PO Bautista using profanities.

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

Allegation (G) Abuse of Authority: On September 2, 2018, on East 52nd Street and Clarkson Avenue, in Brooklyn, Police Officer Joseph Bautista spoke discourteously to

§ 87(2)(b)

In his initial CCRB statement, § 87(2)(b) stated that on September 2, 2018, while he was walking to his UBER, he saw PO Bautista and other officers conducting an unrelated vehicle stop in the vicinity of the direction he was walking. As § 87(2)(b) was walking, PO Bautista saw § 87(2)(b) and said something to the effect of, “What’s up you fucking dickhead,” to § 87(2)(b) (Board Review 27). During his CCRB interview, § 87(2)(b) did not recall what profanities PO Bautista used (Board Review 01). PO Bautista and § 87(2)(b) argued with each other for approximately before § 87(2)(b) walked away from the officers.

PO Bautista did not have an independent recollection of interacting with § 87(2)(b) but PO Bautista recalled conducting a vehicle stop at approximately 5:14 a.m., in the vicinity of East 51st Street and Clarkson Avenue, in Brooklyn with PO Rivera, PO Regan, PO Bojkovic and Sgt. Scally; the vehicle stop was documented in PO Bautista’s memo book (Board Review 11 and 25).

All of the officers interviewed stated that they did not have an independent recollection of this incident (Board Review 12-15).

PO Regan recalled an individual yelling towards his police vehicle and PO Rivera informed PO Regan that he had arrested that individual for DWI a week prior (Board Review 15). PO Regan did not hear an officer speak discourteously towards that individual.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- § 87(2)(b) has been a party to four CCRB complaints and has been a victim in 15 allegations (Board Review 20):

- § 87(2)(b)

- § 87(2)(b) [REDACTED]
- PO Bautista has been a member of service for five years and has been a subject in two CCRB complaints and four allegations, none of which were substantiated. § 87(2)(g) [REDACTED].
- PO Villafane has been a member of service for 13 years and has been a subject in nine CCRB complaints and 21 allegations, of which three were substantiated:
 - 201705029 involved substantiated allegations of a frisk, stop, and he was cited for other misconduct. The Board recommended formalized training and the NYPD imposed formalized training.
 - § 87(2)(g) [REDACTED]
- PO Bojkovic has been a member of service for five years and has been a subject in five CCRB complaints and eight allegations, none of which were substantiated. § 87(2)(g) [REDACTED].
- Sgt. Scally has been a member of service for 10 years and has been a subject in eight CCRB complaints and 17 allegations, none of which were substantiated. § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This case as not suitable for mediation.
- As of May 3, 2019, the New York City of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 21).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad No.: _____

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| Investigator: | _____ Signature | _____ Print Title & Name | _____ Date |
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| Squad Leader: | _____ Signature | _____ Print Title & Name | _____ Date |
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| Reviewer: | _____ Signature | _____ Print Title & Name | _____ Date |
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